D.B. CIVIL SPECIAL APPEAL NO.186/1994

Shri Narayan Manwani
Vs.
State of Rajasthan & Ors.

Date of Order :: 24-05-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Mr. Sangeet Lodha, for the appellant.
Mr. J.M. Bhandari, for University.
Mr. S.K. Vyas, G.A. for State.

This special appeal is directed against the order dated 21.3.1991 in SBCWP No.2311/1983 dismissing the writ petition of the appellant.

The appellant had filed the writ petition challenging an order dated 19-8-1983, by which his admission as part time student in the Master of Engineering Course (Civil) was cancelled. The only ground of cancellation was that being a government servant, he could be admitted to the course only with the prior permission of the Department. The appellant who at the relevant time was a Demonstrator in the Govt. Polytechnic at Jodhpur had applied for admission to the M.E.(Civil) course on 18.9.1981 and he was admitted on 1.10.1981. In the admission notice it was mentioned that the admission of the appellant (and eight others) was provisional on condition that they should submit permission from

their employer otherwise their admission may be cancelled. It is not in dispute that the appellant was allowed to complete the course and appear at the examination in the year 1986 which he passed, he got the Degree on 28.10.1987. This happened during pendency of the writ petition by virtue of interim orders dated 9.9.1983 and 10.10.1983 after notice to the respondents. At this stage if the order dated 19.8.1983 is allowed to stand, it would mean that not only the admission of the appellant but his result of the M.E. Examination and the degree would stand nullified and cancelled.

The case of the appellant is that he had duly applied for permission from the Department but the authorities sat over the request. Having in the meantime been allowed admission to the course though provisionally, the appellant should not have been deprived of the benefit of the successful completion of the course and the degree/qualification which he had acquired. Counsel submitted that it was an appropriate case in which post facto permission could be granted by the department and direction to this effect could have been issued by the learned Single Judge as done in similar cases by this Court.

We find the submissions to be reasonable and well founded. No plausible reason has been given by the respondents as to why permission was not

accorded to the appellant for admission to the Master of Engineering course for improving his qualification. The inaction of the department to accord permission without any plausible reason cannot be countenanced and the cancellation of the appellant's admission on that ground, also can not be approved - especially in view of the subsequent events.

In Shri Kishan Vs. The Kurukshetra University, AIR 1976 SC 376, the Supreme Court held that once a candidate is allowed to appear in the examination, rightly or wrongly, the statute which empowers the University to withdraw the candidature gets exhausted and he cannot be refused admission subsequently for any infirmity at the time of admission and denied permission to appear in the examination. No doubt the admission of the appellant was provisional in nature but the fact remains that he was allowed to appear in the examination albeit pursuant to order of this Court. Having been permitted to appear in the examination which the appellant cleared, it would be unjust to cancel the very admission on a ground which can not be approved, as observed above.

In the above premises, we are unable to sustain the order dated 21.3.1991 dismissing the writ petition which is thus set aside. The impugned

decision of the University dated 19.8.1983 cancelling the admission of the appellant is also accordingly set aside with the direction that the appellant's result of Master of Engineering (Civil) examination and the degree will be treated to be in accordance with law.

In the result, the appeal is allowed in the above terms.

[DINESH MAHESHWARI],J. [S.N.JHA],CJ.

Praveen